

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARGARET A. CLARK, ¹	§
	§
Petitioner Below-	§ No. 547, 2009
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
JAMES W. CLARK,	§ in and for Sussex County
	§ File No. CS96-03741
Respondent Below-	§
Appellee.	§

Submitted: June 11, 2010
Decided: August 12, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 12th day of August 2010, upon consideration of the appellant's opening brief and the record below, it appears to the Court that:

(1) The appellant, Margaret Clark (the "Wife"), filed this appeal from the Family Court's decision, dated August 18, 2009, which denied her petition for modification of alimony and also denied her petition for a rule to show cause. We find no merit to the Wife's arguments on appeal. Accordingly, we affirm the Family Court's judgment.

¹ The Court previously assigned pseudonyms to the parties in accordance with Supreme Court Rule 7(d).

(2) The record reflects that the parties were married on October 19, 1974, separated on August 12, 1990, and finally divorced on August 22, 1996. As part of its resolution of matters ancillary to the parties' divorce, the Family Court ordered that the Husband pay alimony to the Wife in the amount of \$800 per month for one year beginning January 2007. Thereafter, the Husband's alimony obligation was reduced to \$400 per month.

(3) In October 2008, the Wife filed a motion for modification of alimony requesting that the Husband's obligation be increased to \$800 per month. The Wife alleged that she was permanently disabled and could not work. In February 2009, the Wife also filed a petition for a rule to show cause, alleging that the Husband had failed to purchase an insurance policy to cover burial expenses upon his death, which he had been ordered to do by the Family Court in 1996.

(4) The Family Court held a hearing on both petitions on May 19, 2009. The Wife and the Husband were the only parties to testify. Neither was represented by counsel, and no other evidence was presented. The Wife testified that she had been living in a room in the Husband's house since October 2003. She contended that the Husband had not paid her any alimony since she moved into his house. She testified that she was permanently disabled and had not worked since 2002. Her sole source of income was \$706

in Social Security. She testified that she needed at least \$800 in alimony in order to be able to move out of the Husband's house and into her own place. The Husband testified that he had not paid the Wife alimony since she had moved into his house in lieu of collecting rent from her. He further testified that if she moved out, he would resume paying \$400 per month in alimony.

(5) Following the hearing, the Family Court issued its decision denying the Wife's request for an increase in alimony. In reviewing the testimony, the Court, citing title 13, section 1519 of the Delaware Code, found that the Wife had not established that her economic status had changed substantially since the Family Court's original alimony order had been issued.² Moreover, the Family Court found that the Husband was actually in a worse financial situation than he had been in 1996. The trial court concluded that increasing the Husband's alimony obligation would unduly benefit the Wife and cause the Husband undue hardship. With respect to the Wife's rule to show cause petition, the Family Court found that the Wife had presented no evidence to support her claim that the Husband was in violation of the Family Court's 1996 order with respect to obtaining life insurance for burial expenses.

² Del. Code Ann. tit. 13, § 1519(a)(4) provides that an alimony order may be modified "only upon a showing of real and substantial change of circumstances."

(6) In her opening brief on appeal, the Wife contends that the Family Court ignored her testimony and erred in refusing to order the Husband to pay all the alimony he owes her since October 2003. The payment of back alimony, however, was not an issue that the Wife argued to the Family Court in the first instance. Accordingly, we will not consider this claim for the first time on appeal.³

(7) Having carefully considered the Wife's opening brief and the record on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Family Court's well-reasoned decision dated August 18, 2009. The Family Court's findings of fact are amply supported by the testimony presented to it, and we find no error in its denial of the Wife's petition for an increase in alimony.⁴ Moreover, we find no error in the Family Court's conclusion that the Wife had presented no evidence to support her rule to show cause petition.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ Del. Supr. Ct. R. 8.

⁴ *Gregory J.M. v. Carolyn A.M.*, 442 A.2d 1373, 1374 (Del. 1982).